

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 293 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JIVABHAI VITHALBHAI DABHI

Versus

DOLATSINH BHUPATSINGH RAHOL

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Appearance:

MR MB GANDHI for the appellant.

MR PV NANAVATI for Respondent No. 1

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/12/97

ORAL JUDGEMENT

This is an appeal against the order dated 9.8.84 whereby an application for interim injunction has been rejected by the learned Second Joint Civil Judge (S.D), Ahmedabad (Rural), at Narol in Special Civil Suit No. 91 of 1984. From the impugned order, it appears that the defendant had agreed to sell his property to the appellant. He also executed a deed on 31.1.1983 after

receiving the earnest money of Rs.5000/-. The appellant-plaintiff apprehending that the respondent-defendant shall execute the sale deed in favour of any other person, had to file the suit for a specific performance of the agreement to sell and he also filed the application for interim injunction under Order 39 Rules 1 and 2 of Civil Procedure Code to restrain the defendant from transferring, alienating, selling or disposing of the property in dispute in any manner to any other person till pendency of the suit. The defendant pleaded that suit was not maintainable as the plaintiff had no right to file the suit. The defendant however, admitted in his written statement that on 31.1.1983, he executed the agreement to sell the property and received an amount of Rs. 5000/- as earnest money from the plaintiff. In the facts and circumstances of the case, the learned trial Judge rejected the application of the plaintiff for interim injunction.

2. No one appears on behalf of the respondent. The learned counsel for the appellant submitted that the trial Court erroneously considered that the registration of the document was compulsory. In absence of the registration, the plaintiff is entitled to get relief as prayed for and further the trial Court erroneously observed that admittedly, the appellant has not tried to pay the remaining amount within the stipulated period. In fact, he made attempts at various times, when he did not receive the balance of the amount, but he declined to receive the same and did not honour the agreement, then he has to file the suit. He is still ready to pay balance of the amount. He also relied on the case of Nitinkumar Laxmidas and others vs. Smt. Savitaben Pranshankar and others reported in 1996(1) GLR, 516. which is based on a Division Bench decision of this court in the case of Kaushik Rajendra Thakor vs. Allied Land Corporation and others reported in 1987(1) GLH (UJ) 22 wherein it has been held that section 49 of the Registration Act makes it abundantly clear that the suit of the plaintiff would not fall on the ground of compulsory registration introduced by amendment to Section 17 of Gujarat Act XV of 1982. It is also well settled law that unregistered document can be relied on by the parties and it is admissible in evidence. In absence of registration, the plaintiff cannot be denied for his relief as prayed for. In view of the undisputed fact that the defendant had executed the agreement to sell the property in favour of the plaintiff and that he had received the amount of Rs.5000/- in turn as earnest money, I am of the view that the plaintiff has prima

facie case and balance of convenience is also in his favour and he would suffer irreparable loss if injunction or order of status quo is not granted in his favour. Learned counsel for the appellant also submitted that the property has not yet been disposed of by means of transfer or mortgage etc. to any other person in view of the order dated 5.8.85.

3. Accordingly, the appeal is allowed and the impugned order dated 9.8.84 passed below exh. 5 in Special Civil Suit No. 91 of 1984 by the learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) at Narol is set aside. In case the property has not already been transferred by means of sale deed or mortgage to any person, the respondent is directed not to sell the suit property till pendency of the suit. Rule is made absolute.

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